

REMARKS

The Applicants thank the Examiner for the timely indication of allowable subject matter in claim 6. Claims 1-7 and 13-20 were pending in the present application. Claims 6 and 13-20 have been canceled by this amendment, and claims 21-34 have been added, of which two are of independent form (claims 25 and 31). Accordingly, a total of 20 claims (claims 1-5, 7, and 21-34) are pending with three being independent, and so no further claim fees are believed to be necessary. Reconsideration of the present application as amended is respectfully requested.

Response to Claim Objections

Claims 6, and 25-34

Claim 6 is objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form with all intervening limitations. The Applicants have included the subject matter of claims 1, 5, and 6 in new independent claim 25, and have combined the subject matter of claims 1 and 6 in new independent claim 31. Among the reasons these claims are believed to be patentable are those supporting the Examiner's finding that claim 6 includes allowable subject matter. Claims 26-30 depend from claim 25, and claims 32-34 depend from claim 31. These new dependent claims each set forth further inventive aspects of the present application. Consequently, Applicants respectfully submit that claims 25-34 are in condition for allowance on the same grounds that allowability of claim 6 has been indicated.

Response to Claim Rejections

Claim 1

Claim 1 is rejected under 35 U.S.C. §103(a) as being unpatentable over Atago et al. (US 4,593,663, hereinafter *Atago*) in view of Peterson, Jr. (US 3,960,130, hereinafter *Peterson*) and

time.” Further, Applicants respectfully note that the *OA* appears to misapprehend *Peterson*, and so offer the following explanation of its cited sections.

The *OA* asserts that *Peterson* discloses controlling the engine acceleration using the engine temperature and speed in column 6, lines 3-13. *OA*, page 3, lines 4-7. *Peterson* at column 6 lines 3-13 is the beginning of a discussion illustrating the release of the throttle back to normal control. See *Peterson*, column 6, lines 3-36, especially lines 29-36. Therefore, rather than demonstrating control of acceleration, the referenced section of *Peterson* describes releasing control of the throttle. While *Peterson* column 5, lines 67-8, and column 6, lines 1-2 describes opening the throttle at the time of energizing the ignition switch, such opening of the throttle is not “controlling engine acceleration” because the throttle position at full-open, which can result in an unregulated variable engine acceleration with changing engine and ambient operating conditions.

The *OA* further asserts that *Peterson* discloses controlling the engine acceleration rate using the engine temperature and speed at a target time in *Peterson* column 4, lines 24-26 and graph in figure 1. *OA*, page 3, lines 4-7, emphasis added. The referenced section of *Peterson* refers to a “time required to purge the engine” (col. 4, lines 24-25), which is not utilized in the controls and does not vary with actual conditions. Rather, the “time required to purge the engine” is only realized as a maximum reference speed (see *Peterson*, col. 5, lines 10-23).

For the reasons described preceding, it is respectfully submitted that *Atago*, *Peterson*, and *Kudora*, individually or in combination, do not teach every element of claim 1. Therefore, the Applicants respectfully submit that the rejection of claim 1 under 35 U.S.C. §103(a) be withdrawn. Moreover, further reasons support the patentability of dependent claims rejected on like grounds.

Claims 2 and 4

For example, claims 2 and 4 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Atago* in view of *Peterson* and *Kuroda*. The features of claim 2 include “governing speed of the engine after reaching the target engine speed.” The features of claim 4 include “calculating the engine acceleration from engine rotational speed and a time period determined relative to the initial operation of the engine.” The *OA* is not clear where such features are found in the asserted combination of references. Applicants respectfully request clarification regarding the same, and further note that at the very least the same reasons supporting patentability of claim 1 also support these claims depending therefrom.

Claims 3, 5, and 7

In another example, claims 3, 5, and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Atago*, in view of *Peterson*, *Kuroda*, and *Fujimore et al* (US 4,742,462, hereinafter *Fujimore*). The features of claim 3 include “the fuel is of a diesel type.” The features of claim 5 include “regulating fuel supplied to the engine to provide the engine acceleration calculated to provide the target speed at the target time.” Features of claim 7 include “detecting performance of the engine at or above at least one of an engine speed threshold and an engine acceleration threshold.” Claims 3, 5, and 7 are rejected in the *OA* in a section that does not appear to address the claimed subject matter (*see OA*, page 4, beginning at line 4). Applicants respectfully request clarification for these rejections, too. The Applicants further note that at least the same reasons supporting patentability of the base claim also apply to these corresponding dependent claims.

Other Claim Additions

Claims 21-24 have been added to depend from claim 1, and set forth further inventive aspects of the present application. These claims are also believed to be patentable over the art of record for at least the same reasons as claim 1.

Conclusion

Applicant believes that claims 1-5, 7, and 21-34 are in condition for allowance. Reconsideration of the present application as amended is respectfully requested. In the event a telephone conversation would help expedite the prosecution of this application, the Examiner may reach the undersigned at (317) 238-6321.

Respectfully Submitted:

By: 

L. Scott Paynter, Reg. No. 39,797
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
Phone: (317) 238-6321
Fax: (317) 238-6371